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The motion was put and carried.

Clause 2 was put and carried.

Clause 1 was put and carried.

The Preamble was put and carried.

THE HON. DR. P. SUBBARAYAN :—" Sir, I move—

'*that the Madras City Police (Amendment) Bill,* 1947 (*L.A. Bill No.* 40 *of* 1947) *as passed by the Legislative Assembly be passed into law*'."

The motion was put and carried.

(7) THE MADRAS HINDU WOMEN'S RIGHTS TO PROPERTY (EXTENSION TO AGRICULTURAL LAND) BILL, 1947 (L.A. BILL NO. 4 OF 1947).

THE HON. DR. P. SUBBARAYAN :—" Sir, I move—

'*that the Madras Hindu Women's Rights to Property (Extension to Agricultural Land) Bill,*[a] 1947 (*L.A. Bill No.* 4 *of* 1947) *as passed by the Legislative Assembly be taken into consideration at once.*'

"Sir, this measure has become necessary because Dr. Deshmukh's Bill, which was passed as far back as 1937, was declared to be *ultra vires* of the Central Legislative Assembly so far as agricultural land was concerned. Therefore during the time the Advisers were in power, it was put to them, but they felt that it ought to be passed by the popular Legislature than be undertaken by Governor's legislation, and hence this measure. There has been some controversy in the Lower House which I do not want to burk here. But I would like to point out that ten years has elapsed since the passing of Deshmukh's Bill and transactions have taken place under it. But as I said before, though I am a social reformer, in matters of legislation I am inclined to be a conservative, and I feel that you should not rip open things that have happened becuse of decisions of courts. We should not disturb property which have changed hands because of the decision of the Federal Court. But at the same time there is a certain amount of retrospective effect given. For, transactions which took place after the Bill was published in 1946 have been declared invalid, because then, it may be said that people have had sufficient notice and they knew legislation of this kind would come in. So the select committee adopted an amendment to that effect and it was moved in the Lower House and it has been accepted. Therefore, Sir, I move the Bill be taken into consideration at once. But before I resume my seat I wish to say one thing more. How careful the Government of India have been in the passage of this measure I shall show by reading one passage to hon. Members of this House :

'*The rule of law is that unless retrospective effect is given in the body of the Bill itself there is no question of retrospective effect.*'

" Evidently the Government of India, during the discussion of Dr. Deshmukh's Bill, felt that the wording of the Bill might have

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[a]Printed as Appendix VII on page 131 infra.

that effect. So in section 4 which was moved by Sir Nripendranath Sircar it was provided that 'nothing in this Act shall apply to the property of any Hindu dying intestate before the commencement of this Act'. Thus not only did they not provide for retrospective effect but they made it crystal clear that there is no question of retrospective effect by introducing section 4. Sir, I move the Bill be now taken into consideration."

SRI B. BHIMA RAO :—" Mr. President, Sir, I want to say a few words, not by way of moving amendments to the sections of the Bill, but by way of observing that retrospective effect as from 18th April 1937 should be given effect to, to the provisions of the Bill. I want to say certain facts, and of course in doing so, I do not want to invite the disciplinary action of the High Command. But I want to say a few words because my hon. Friend referred to a certain section in the main Act showing that it shall not have retrospective effect. As we all know, Sir, the Federal Court decision was given in 1941. Immediately after that, eight provinces passed in the years 1942–43 amendment Acts making the Act applicable to agricultural land by making an additional provision in every one of those eight amendment Acts—for all the eight provinces out of the eleven provinces, i.e., except Madras, North-West Frontier and another province—passed legislation to the effect, that this amendment Act shall include and shall be deemed to have always included agricultural land. In every one of the amendment Acts passed by the various provincial Legislatures such a provision was included because from the years 1937 to 1941, in which year the Federal Court gave its decision—during these four years members of Hindu families have acted on the assumption that the law applied to agricultural land also. I have come across various instances where parties have acted by giving a due share to Hindu women who were unfortunately widowed after 18th April 1937. In cases I have conducted and we have come across, if retrospective effect is not given—and here even though Government may not be convinced, yet I wish to say this—though the object of the Bill is to prevent litigation, there will be more litigation by not giving retrospective effect, for there have been numerous transactions effected on the assumption that agricultural property also was included within the purview of this Act. Now after these various amendment Acts of the various provinces I moved the Adviser's Government in Madras to pass an amending measure to the same effect in this province also, Sir, I did not get any reply, for the Adviser had not the courtesy to send a reply to my letter.

4-30 p.m. " Immediately after the Congress Ministry took up office on the 30th April 1946 I sent in a Bill to your office as well as to the then Minister Mr. K. Bhashyam, as well as to the party office, where we are expected to send it. I do not claim any originality for it. It was in accordance with the United Provinces amendment measure passed in the year 1942 wherein retrospective effect has

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been given. From your office I got an endorsement to the effect that the Government was introducing such a measure and I may take back my measure. I did not proceed with it. This was in July 1946, about 18 months ago. Not July 1947. My friend concedes that he can give retrospective effect to a certain extent to benefit all such unfortunate women who have got widowed after November 1946. If retrospective effect is not given, as I have already said, all those transaction which took place from 1937 to 1941 would be re-opened and people will be very anxious to get back land that they have given to the poor Hindu widows.

"In a place like Bellary and also in other districts they take the law into their own hands. They enter upon the fields and take away all the produce leaving the poor widow to resort to a court of law. They will say that no retrospective effect is to be given and that the widow should be satisfied with having been in possession of the lands for 12 years. They would thus try to take back the land. As a lawyer I know what the result will be. Already knowing that no retrospective effect is to be given to the measure they are resorting to this step of entering upon the lands after the Federal Court decision was given in 1941. I only wish, Sir, that my learned friend will listen to my arguments because I am still a lawyer in harness."

THE HON. DR. P. SUBBARAYAN :—"I am listening to the hon. Member, Sir."

SRI B. BHIMA RAO :—"Sir, I am a practising lawyer and I know the disadvantages of the parties affected by the legislation. As soon as the Federal Court decision was passed people began to take mortgages of landed property in lieu of a debt. The question arose before the Madras High Court. The Madras High Court decided that the mortgages on landed property came under the category of agricultural property to which this Act is not applicable and hence the poor widows were deprived of their shares in the debts. In certain rich families such debts are extensive than the debts covered by promissory notes and other ordinary debts. Generally they took mortgages. Now-a-days after the passing of the Agricultural Relief Act as well as this legislation and after the decision of the Federal Court has been given they resort to the expedient of taking regular sales giving them an oral promise that they will re-convey the property when the debt is paid. This is the second injustice perpetrated in the case of these poor widows.

"So, Sir, I do not want to move any amendment. If in the face of these facts my hon. Friend is convinced that there is a case for giving retrospective effect I do not see any other case more fit. We had occasion the other day of giving retrospective effect to alienations of lands in the zamindaris because in 1939 the Prakasam's Committee thought that a legislation should be introduced and every one would have been cognizant of the fact that such legislation would be introduced. Any one who has taken a transfer of

property after 1939 would be deprived of it and such transactions would be declared null and void. That was the argument that was advanced. But now in this case after the Federal Court decision was given and when 8 provinces in the Indian Union have passed such legislation giving retrospective effect as from 1937, is there not a case for giving retrospective effect to this measure also? I submit, Sir, that it is a fit case. We have had just now, about a quarter of an hour ago, retrospective effect being given to a measure, namely, the Marumakkattayam Amendment Bill which is really a well-deserving case. So, Sir, this Bill also which is in the interests of the poor widows is a fit case in which retrospective effect should be given. If the Hon. Minister's object was to prevent litigation, I think, Sir, by this Bill we will be opening more doors for litigation by not giving retrospective effect with regard to transaction from 1937 to 1941. There will be more litigation on account of this than by giving retrospective effect to this measure. I appeal, to my hon. Friend to consider, especially when the Legislature is sitting again, whether he could not incorporate a small clause to that effect as in the eight amendment Acts excluding all transactions which have taken place till now either for consideration or for no consideration. With these few words I close my speech."

SRI M. NARAYANA MENON :—" I support the Bill, Sir, in all its aspects. The chief point urged by the previous speaker against the Bill is this, that the Bill does not give retrospective effect from 1937 when the Act was passed in the Central Legislature. The Central Legislature has taken the view that though from the days of Manu the widows remained poor, neglected and so they were not to be given any benefit by giving the Act any retrospective effect for any prior period, say 10 years previous to it. Unfortunately, legislation regarding agricultural lands was not within the jurisdiction of the Central Government, and the Federal Court in 1941 declared the Act invalid so far as agricultural lands were concerned. Now after 1941 the people thought that they had the decision of the Federal Court and they could act as if the Act did not apply to agricultural land from 1937. There were alienations, partitions and mortgages and so many things relating to such lands over which the widow had no right. If retrospective effect is given to all these transactions there will be a number of cases which will feed the lawyers and the number of litigations will be considerable. My hon. Friend's contention seems to be that before 1941 there were partitions, mortgages and so many things in which the widows were given a right over the property under the Act of the Central Legislature and that this Act would unsettle those things if retrospective effect is not given to it. Certainly that is not a correct position. If by consent widows rights were recognized under registered partition deeds and shares allotted to them the parties to the transaction cannot come down to a court and claim in law that all these things must be unsettled. My submission is that if retrospective effect is given to the Act from 1937, that is the date on which the Act was passed

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by the Central Legislature, there will be a multiplicity of litigation and people will be ruined, that is those people who have advanced money or purchased property in the belief that the widows had no right to the agricultural lands, I am glad, Sir, that the mover of this Bill has really considered every aspect and refrained from giving retrospective effect to this Bill. I support this Bill in all its aspects."

* MRS. HENSMAN :—" Mr. President, Sir, this afternoon might be taken as the landmark in the history of this Council. We have passed Bill after Bill up to now with some comments, two to help women and one to help gentlemen in their hereditary assets and this is the third Bill that is going to help women who have up to now suffered from a very very grave disaster, not because they have had an honourable marriage and a home and after they have lost their guardian and protector. Up to the time when this Bill was introduced these widows have lost a very great portion of their living and all the substance that would have been theirs had their husbands lived. I believe, in law there is such a thing as acts of God. Sir, the women suffer because an act of God has chosen to remove her helpmate and very rightly the Hon. Minister has brought forward this Bill immediately to rectify that. I say this because, I do see a very great deal of point in what the hon. Speaker, who spoke before me in this House said, that retrospective effect from 1937 would really settle many of these widows in a right position. He has referred to provinces other than our own that have worked the retrospective effect on paper. But I have been in touch with some of the women's organizations in some of these provinces and they find it mighty hard to implement that retrospective effect in material goods, possessions and land. Because this Bill can be made much better by going back and giving retrospective effect from 1937 is no reason not to congratulate the Government today on taking this great step forward and giving retrospective effect from November 1st of 1946. There is a certain amount of fairness in that because every man and every woman who is seeing the papers and who is in touch with public life knew that this kind of measure was going to be introduced in the near future. Mr. President, Sir, I think that if today the Government could immediately implement the clauses of this Bill from April 1937 there will be immeasurable good done to them, but there is no reason why we should not rejoice that they should not give effect to from November 1946. Practical circumstances at the moment perhaps prohibit them from doing the former but the latter is well within their power.

" In this connexion I would also like to say that in future this is going to make a very great difference to marriages. I think that the dowry system might well be affected by the clauses now introduced because the parents when marrying their daughters to gentlemen of position, influence and a certain amount of property

can be sure that the girl is going to be well cared for and that in turn their own sons will look after the daughters of other gentlemen well. Dowry will receive its death-blow in future. I understand that the origin of the dowry system must have been in providing for the future of the daughter in case of such disaster happening. I also feel that in the future we are going to have a great deal of power and happiness in a country that ensures that when a woman is left she is not going to be left a destitute. This will also help to implement some of the other Bills that we have passed today and meet the economic needs of women."

* Mrs. M. N. CLUBWALA :—" Mr. President, I should like to say a few words on this question concerning the rights of women though I am not a Hindu widow myself. (Laughter.) Being a Parsi widow, we do not have to suffer with these drawbacks."

Mr. PRESIDENT :—" This is a ladies' day."

4-45 p.m. * Mrs. M. N. CLUBWALA :—" I should like to give my support to the cause of my unfortunate sisters, the Hindu widows with whom this Bill deals. I am sorry, Sir, the Government have not given retrospective effect to this Bill. There are thousands of poor women who have been hoping to have some benefit if retrospective effect is given to the Bill. Sir, in the other House one of the hon. Members who has been always opposed to giving retrospective effect to legislation has pleaded for giving retrospective effect to this Bill. Still, I am sorry, Sir, that the Government have not agreed to this course, although they have in another Bill proposed giving retrospective effect since 1802. I think the Government would do well to give retrospective effect to this Bill also. With these words, I support the Bill."

The Hon. Dr. P. SUBBARAYAN :—" Sir, I listened with great attention to the hon. Member Mr. Bhima Rao's speech, though he did not think so. I know he is still practising at the Bar and is having active practice as he called it. But in spite of the argument he advanced, I am not convinced of giving retrospective effect to this measure.

" The hon. Member talks of suits filed between 1937 and 1941. I ask him, Sir : What about suits filed between 1941 and 1947? The number of suits filed during six years would certainly be more than the number of suits filed during four years. You have to consider the pros and cons in giving retrospective effect to legislation. The Government as a whole felt that in giving retrospective effect there were more contrary matters than those in favour. That was the reason why we decided not to give retrospective effect.

" Of course, I can understand women pleading for their sex. I am one of those who believe in sex equality. At the same time I think they will agree with me that it is very hard to upset things that have happened during the course of ten years in view of the

decisions of the courts. My hon. Friend, Mr. Narayana Menon, has really explained the position of the Government as well as it can be. I feel, Sir, that the measure will give the necessary relief that is intended by the Act and therefore I would request the House to pass the Bill as it has emerged from the lower House."

The motion was put and carried.

Clauses 2, 3, 1 and the preamble were put and carried.

THE HON. DR. P. SUBBARAYAN :—" Sir, I move—
'*that the Bill be passed into law.*' "

The motion was put and carried and the Bill was passed into law.

MR. PRESIDENT :—" We have finished the agenda before us. There is no work for tomorrow. The House will now adjourn and re-assemble at 11 a.m. on Monday, the 8th December 1947, to discuss the supplementary budget."

The House adjourned to meet again on Monday, the 8th December 1947.

III.—PAPERS LAID ON THE TABLE OF THE HOUSE.

1. *Notification published with G.O. No.* 3994, *Home, dated* 31*st October* 1947 *making certain amendments to the Motor Vehicles Rules*, 1940, *published with Home Department Notification No.* 357, *dated the* 29*th March* 1940, *as subsequently amended.*

2. *The Madras Entertainments Tax (Amendment) Bill*, 1947 (*L.A. Bill No.* 28 *of* 1947), *passed by the Assembly and received therefrom in the Council.*

3. *The Madras General Sales Tax (Amendment) Bill*, 1947 (*L.A. Bill No.* 25 *of* 1947), *passed by the Assembly and received therefrom in the Council.*

4. *The Madras Marumakkattayam (Amendment) Bill*, 1947 (*L.A. Bill No.* 39 *of* 1947), *passed by the Assembly and received therefrom in the Council.*

5. *The Madras City Police (Amendment) Bill*, 1947 (*L.A. Bill No.* 40 *of* 1947), *passed by the Assembly and received therefrom in the Council.*

6. *The Madras Hindu Women's Rights to Property (Extension to Agricultural Land) Bill*, 1947 (*L.A. Bill No.* 4 *of* 1947), *passed by the Assembly and received therefrom in the Council.*